

will have the effect to obstruct the flow of the water, to the prejudice of the complainant. This, I think, they have no right to do, and as the injunction is confined in its terms, and merely prohibits the depositing of earth, and other materials, on the bank, below the mill-dam of the complainant, which deposits, as shown by the proof, will be attended with injurious consequences to him, I do not think it should be dissolved. It appears from the testimony of one of the witnesses, and he is uncontradicted, that the defendants have room enough for the deposit of their offcast, without approaching nearer the stream, though the haul will be longer. The continuance of the injunction, therefore, will not interfere materially with their operations.

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THOS. DONALDSON for Complainant.

ROBERT LEMMON for Defendant.

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ROBERT WYLIE ET AL.	}	MARCH TERM, 1851.
vs.		
WILLIAM McMAKIN AND WIFE.		

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[CHANCERY PRACTICE—PARTIES TO A SUIT TO FORECLOSE A MORTGAGE.]

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UPON a bill for the foreclosure and sale of mortgaged property, where the answer does not admit the claim stated, and insists upon other credits than those admitted by the bill, and where there would be difficulty in fixing upon the precise sum, by the payment of which, the defendant might prevent a sale, the case must be referred to the Auditor, for a preliminary account, before a final decree will be passed.

The rule is well settled, that if a portion only of the mortgaged debt is due at the time of the decree, the mortgagor or party holding the equity of redemption can prevent a sale, by bringing into court the amount due with interest, and costs, and the decree will be allowed to stand, to enforce payment of the balance with interest as it becomes due.

The general rule is, that all incumbrancers shall be made parties, whether prior or subsequent, and though cases may be found, where it has been held that a prior mortgagee need not be made a party, because his rights are paramount, it would not be safe, in the face of opposing authorities, of the highest respectability, to say, that such is the established law of this court.